

**BEFORE THE TENNESSEE DEPARTMENT OF EDUCATION  
DIVISION OF SPECIAL EDUCATION**

**IN THE MATTER OF:**

**A.P.**

**Petitioner,**

**v.**

**SUMNER COUNTY BOARD OF  
EDUCATION,**

**Respondent.**

**Docket No. 07.03-101567J**

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**FINAL ORDER**

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This matter came to be heard on October 26-29 and November 9-10, 2009, before Thomas G. Stovall, Administrative Judge, at the Sumner County Board of Education in Gallatin, Tennessee, pursuant to Tenn. Code Ann. §49-10-606 and Tennessee State Board of Education Rule No. 0520-1-9-.08. The Petitioner A.P. was represented by Ms. Florence Huffman of Lexington, Kentucky, who appeared *pro hac vice*, and Ms. Holly Ruskin of Nashville. The Respondent Sumner County Board of Education was represented by Ms. Melinda Jacobs of Knoxville.

In general the subject of this hearing is the claim by the Petitioner that she has not received a Free and Appropriate Public Education (FAPE) from the Respondent since the time of her enrollment in the school system in December 2004. The Petitioner is seeking four years of compensatory education, reimbursement for out of pocket expenses incurred by the family for private Applied Behavior Analysis (ABA) services, a new Individualized Education Program

(IEP) based upon one-to-one ABA instruction in core academics and other related services. After consideration of the record in this case it is determined that the Respondent Sumner County Board of Education has provided FAPE to the Petitioner during her years of enrollment in the school system and continues to offer FAPE for the future. The Petitioner's request for reimbursement and alternative educational services is not well founded and is hereby **DENIED**. This decision is based upon the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. The Petitioner is a 21 year old woman who has been diagnosed with autism, mental retardation, and communication deficits. She has consistently been assessed with an IQ in the low 40's and has been determined to have a significant cognitive deficiency with commensurate adaptive behavior deficits. In 2006, the Petitioner's parents filed a court petition to have the Petitioner adjudicated as an "incompetent" adult and subsequently were appointed as her conservator. It is undisputed that the Petitioner is a student with disabilities who is in need of special education and related services pursuant to the Individuals with Disabilities Education Act (IDEA) and related Tennessee laws and regulations.

2. The Petitioner first attended a public school program in 1996 at the age of 8 years old when she enrolled in the Lincoln-Way Area Special Education Joint Agreement District 843 (Lincoln-Way), in New Lenox, Illinois. Prior to that time her parents implemented a home based program designed by the National Academy of Child Development. This program was based on patterning exercises thought to promote neurological development.

3. The Petitioner's initial IEP from Lincoln-Way for the 1996-97 school year contained evaluation data that the Petitioner was performing in the "moderately mentally retarded range on the verbal comprehension domain," and evidenced academic skills ranging

"from 3 years to 5 years 9 months." The IEP had an annual goal of reaching pre-primer reading levels by the end of the 1996-97 school year. Throughout the 1996-97 and 1997-98 school years, the Petitioner's IEP goals continued to focus on bringing her up to a pre-primer reading level, and the development of independent functioning and socialization skills. The IEP provided reading goals concentrating on phonics, sight words, and language skills.

4. In 1998, the Petitioner's family moved to another city in Illinois where they lived until relocating to Colorado in 2000. The Petitioner was withdrawn from the Lincoln-Way public schools prior to the end of the 1997-98 school year. The Petitioner was not enrolled in public school from the spring of 1998 until January 2001, in Colorado.

5. In January 2001, the Petitioner enrolled in the Lewis-Palmer School District (Lewis-Palmer) in Monument, Colorado, as a sixth grader. Her initial IEP in Colorado indicated that she was functioning at the first to second grade level academically. Formal standardized intelligence testing showed the Petitioner "demonstrated cognitive abilities within the very delayed range of intellectual functioning."

6. In January of 2002, Lewis-Palmer developed the Petitioner's seventh grade IEP which continued to focus on adaptive behavior skills such as blowing bubbles in a swimming pool, tying her shoes, and tracing letters. The IEP also focused on first grade level academic (math and reading) skills.

7. The Petitioner's eighth grade IEP was developed in January 2003. This IEP indicated that the Petitioner continued to function at a first to second grade level academically. She also continued to have significant deficits in the areas of social skills, communication, and adaptive behavior.

8. The Petitioner's ninth grade IEP developed in February 2004 indicated that she had shown little improvement in her academic skills. The Petitioner continued to function at a first to second grade level academically. Standardized achievement testing concluded that her basic reading skills were "negligible."

9. Late in 2004, the Petitioner's family began the process of relocating to Tennessee. Lewis-Palmer developed a revised IEP in December 2004 for the purpose of transitioning the Petitioner to a new school district. This IEP was provided to the Respondent Sumner County Board of Education in preparation for the development of a new IEP. The Lewis-Palmer IEP contained goals and objectives for bringing the Petitioner up to a first grade reading level by the end of the 2004-05 school year.

10. During the four years the Petitioner spent attending public school in Colorado, she made negligible academic progress, never reading or performing math above the first to second grade level. Despite this documented lack of academic progress the Petitioner's parents approved of the IEP developed by Lewis-Palmer in December 2004, and wanted this IEP to be implemented by the Respondent.

11. An IEP meeting was convened by the Respondent on December 15, 2004, to prepare for her enrollment into the Sumner County schools and her placement at Beech High School. The Petitioner was 16 years old. At this meeting, the school officials considered and accepted the evaluations that had been conducted by Lewis-Palmer earlier in the year, including the determination that the Petitioner was still reading at a first grade level.

12. The Petitioner was classified as a student with autism and an interim (30 day) IEP was developed by the Respondent on January 3, 2005. The purpose of the interim IEP was for

the Respondent to get to know the Petitioner better. The Petitioner's mother signed in agreement with this interim IEP.

13. Shortly after the Petitioner entered the school system, her teacher Kim Holmes conducted a series of informal assessments to determine her baseline level of academic skills. Ms. Holmes' purpose in conducting these informal assessments was to determine if the Petitioner was actually performing at the level indicated on the Lewis-Palmer IEP that had been provided to the Respondent at the time of the Petitioner's arrival in Sumner County. Ms. Holmes determined that the Petitioner was not performing consistent with the levels recorded on the Lewis-Palmer IEP which made it necessary for her to teach the Petitioner at a level more commensurate with her ability.

14. The IDEA requires a school system to develop a transition plan for special education students. The plan must include the services to be provided to the student to allow for the transition from school to post-school activities. These transition services focus on both academic and functional achievement and must be designed to meet the individual needs of the student. The services may focus on such goals as vocational training, supported employment, daily living skills and independent living.

15. The CHOICES program was created by the Respondent in 2006 and is designed for students with disabilities who have graduated from high school but who need support from educational staff in developing the skills to work and function in the community. The classroom area is set up like an apartment with a kitchen, bathroom, and bedroom areas. The CHOICES program also offers students the opportunity for supportive work placements outside the school setting. The program was patterned after a program developed by the Tennessee Transition Coalition. The CHOICES program is held at Beech High School.

16. An IEP meeting was convened on February 3, 2005 to develop the Petitioner's first formal IEP in Sumner County. A transition assessment of the Petitioner was conducted by Ms. Holmes, the Petitioner's teacher, in preparation for the IEP meeting. The Petitioner's mother did not want to discuss transition services at the IEP meeting so the IEP team discussed the mother's wishes for academics.

17. The IEP team implemented the Reading Milestones program for the Petitioner. Reading Milestones was developed initially for hearing impaired students whose reading difficulties are due to language deficits. It is designed to help students who are at the very lowest level in reading and builds reading skills based on language. It is often used with students with autism.

18. Ms. Holmes implemented the Petitioner's reading goals using the Reading Milestones program. The Petitioner made progress until she reached Level Three of the series toward the end of the 2006-07 school year. The Petitioner's mother insisted on pushing the Petitioner through Level Three and into Level Four of the program despite Ms. Holmes' concern about the Petitioner's lack of comprehension. In Ms. Holmes' opinion, the Petitioner "topped out" at the second grade reading level while in her class.

19. At the IEP meeting convened on May 9, 2007, the Respondent proposed placing the Petitioner in the CHOICES classroom for the 2007-08 school year. At this time the Petitioner was almost 19 years old and had graduated from high school with a special education diploma. At this meeting the parties agreed to place the Petitioner in the CHOICES program for the 2007-08 school year. The Respondent also acceded to the parents' request that the Petitioner continue to receive reading instruction in the Reading Milestones program while she was placed in the CHOICES classroom.

20. The Petitioner began the 2007-08 school year in the CHOICES program. The next IEP meeting was convened at the parents' request on October 18, 2007. At this meeting, the Petitioner's parents asked that she be taken out of the CHOICES program and placed in the Comprehensive Development Classroom (CDC) where she could focus on reading and math skills rather than functional skills. The Respondent agreed to the parents' request and immediately removed the Petitioner from the CHOICES program and placed her in a CDC class with Ms. Janet Garcia as her teacher. Ms. Garcia had been trained in the application of ABA principles and utilized these in her class.

21. At the October 18, 2007, IEP meeting the Respondent agreed to the parents' request for specific services to be provided to the Petitioner including: (1) placement in art or music; (2) placement in history or science with a student assistant, with materials provided by a professional; (3) homework coming home; (4) Reading Milestones/journaling/reading activities; (5) ABA with math; and (6) a job placement.

22. Upon the parents' request for additional evaluations, the Respondent conducted a comprehensive re-evaluation of the Petitioner in November and December of 2007. An Eligibility Meeting was convened on December 12, 2007, for the purpose of reviewing the results of the re-evaluation and determining the Petitioner's continuing eligibility for special education and related services. At this meeting, the various evaluators reviewed and summarized their evaluation reports and recommendations. The results were consistent with earlier evaluations which demonstrated moderate mental retardation with commensurate academic achievement and adaptive behavior. The reevaluation cited a need for functional reading skills and therapy for increased socialization and independence. The Petitioner's mother was present for the meeting and signed in agreement with the conference notes. Pursuant to her parents'

wishes, the Petitioner remained in the CDC classroom for the remainder of the 2007-08 school year.

23. An IEP meeting was convened on January 7, 2008, for the purpose of developing the Petitioner's next annual IEP. The team agreed to continue the Reading Milestones program and to meet again in nine weeks to review the Petitioner's progress.

24. Another IEP team was convened on March 19, 2008, to review the Petitioner's progress. The Petitioner's mother informed the IEP team that she was waiting on the completion of an independent evaluation she was obtaining from Vanderbilt University.

25. On May 14, 2008, another IEP meeting was convened to review and revise the IEP goals and to review any independent evaluations obtained by the family. The independent speech/language evaluation report offered to the IEP team was consistent with the previous speech/language evaluation completed by the Respondent. It was agreed that no IEP revisions were necessary at that time. At this meeting, the Petitioner's mother demanded 30 hours of summer programming in reading, math, and writing and refused the Respondent's offer of 12 hours of Reading Milestones programming for extended school year services.

26. On May 21, 2008, the IEP team met again to review and discuss extended school year services. The Petitioner's mother reiterated the demand for 30 hours of extended school year services for reading, math, and writing. Eventually the IEP team agreed upon 24 hours of extended school year services to address both academic and socialization skills.

27. The next IEP meeting was convened on August 7, 2008, for the purpose of reviewing the Petitioner's progress in her extended school year program. It was agreed by the team that the Reading Milestones program would be continued and the Petitioner would remain



in the CDC classroom despite the Respondent's belief that she would be better served in the CHOICES program.<sup>1</sup>

28. An IEP meeting was held October 20, 2008, to review the Petitioner's progress on her IEP goals during the first weeks of the 2008-09 school year and to address continued parental concerns. The Petitioner's parents presented several independent evaluation reports the family had obtained, including a Psychological Evaluation, a Speech/Language Evaluation, a Behavior Assessment, an Occupational Therapy evaluation, and a Physical Therapy Evaluation. The parents demanded a program that would raise the Petitioner's IQ, speech/language ability, and achievement levels, and that would include: (1) four years of one-to-one academic instruction for a half-day and a half-day transition program year round; (2) a classroom observation by a Board Certified Behavior Analyst (BCBA), and (3) a formal transition assessment. The parents expressed concern that the Respondent had not been taking the steps necessary so that the Petitioner would be functioning academically at the level of her peers upon graduation. The Respondent did not agree to these demands.

29. The Respondent had planned for the Petitioner to experience a variety of supported work settings during the 2008-09 school year. The Petitioner's parents refused to allow her to participate. The Petitioner became 20 years old in October 2008.

30. Between the fall of 2007 and the fall of 2008, the Petitioner was evaluated by the both the Respondent and independent evaluators hired by the parents using a total of 38 formal and informal measures. The results of this testing confirmed that the Petitioner's IQ is in the low to mid-40's, with commensurate academic achievement. Her adaptive skills are somewhat higher, testing in the low 60's. The Petitioner has weaknesses in social and vocational skills,

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<sup>1</sup> The Petitioner was in Janet Garcia's CDC classroom from October 2007 through May 2009. It was Ms. Garcia's belief that the Petitioner should have been in the CHOICES program.

and is highly dependent on adult prompting and adult attention. These evaluation results were consistent with the evaluations conducted throughout the Petitioner's academic years including when she was a young child in Illinois and Colorado. A summary of these evaluations was presented to the Petitioner's parents at the IEP meeting held December 3, 2008.

31. The IEP team reconvened on January 6, 2009 to complete the Petitioner's IEP for the 2008-09 school year. For the first time, the Petitioner's mother stated that the Petitioner was becoming physically aggressive at home. The Petitioner's parents requested the services of a BCBA to develop a Behavior Intervention Plan (BIP). Even though the Respondent noted only one minor instance of aggressive behavior at school in the Petitioner's four years in Sumner County, it agreed to hire a BCBA to observe the Petitioner in the classroom and to conduct a Functional Behavior Assessment (FBA) and develop a BIP if needed. The Petitioner's parents submitted a proposed IEP that provided for: (1) four additional years of school with extended school year and extended day services to raise the Petitioner to the level of a senior in high school; (2) a small group setting with a highly qualified teacher certified to teach a child with autism and highly qualified paraprofessional; (3) a teacher trained in both ABA and Treatment and Education of Autism and related Communication handicapped Children (TEACCH); (4) a sensory diet; (5) services from a BCBA; (6) assistive technology/computer programs for reading, writing, and math designed for students with autism; (7) an additional two hours per day of academic instruction for three school days per week; and (8) the Beacon Literacy reading program. This proposed IEP was rejected by the Respondent.

32. The IEP was finalized on January 6, 2009. The IEP called for the placement of the Petitioner in the CHOICES program. The Respondent agreed to the parents' request for a number of specific items to be included in the instructional program such as: academic

instruction in group of no more than four students; observation by a certified BCBA to make recommendations for a BIP; teacher trained in ABA and TEACCH; and social skills instruction by an autism consultant. The Petitioner's parents refused to sign the IEP.

33. On January 19, 2009, the Petitioner filed a Complaint for Due Process Hearing. The Resolution Session was conducted on February 20, 2009, and was unsuccessful. However, the parents consented to a series of evaluations by John Thomas (autism/transition services), Dr. Christine Reeve (BCBA), and Dr. Barbara Krakower (reading).<sup>2</sup> Mr. Thomas conducted his Assessment of Transition Needs on March 12, 2009, Dr. Reeve conducted her Functional Behavior Assessment on March 20, 2009, and Dr. Gibbs conducted a Comprehensive Literacy Assessment on June 24, 2009.

34. Mr. Thomas believed that the Petitioner's academic instruction needed to be applied to a natural environment. He did not believe it appropriate for a 21 year old to receive one-to-one instruction on "core academics" without an attempt to generalize those skills to a natural environment. He was familiar with the CHOICES program and thought it was appropriate for the Petitioner's needs.

35. Dr. Reeve stated that ABA principles were being utilized in the Respondent's curriculum in both the CDC class and was available in the CHOICES program. She believed that all of the Petitioner's instruction needed to be focused on functional or independent living skills and this could best be provided to the Petitioner in the CHOICES program.

36. Dr. Gibbs is a speech language pathologist and a reading specialist. One of the reading assessment tools she administered to the Petitioner was the Test Of Word Reading Efficiency (TOWRE). The Petitioner scored below the 1<sup>st</sup> percentile on the assessment. Dr.

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<sup>2</sup> With the agreement of the Petitioner's parents, Dr. Denise Gibbs was substituted for Dr. Krakower due to the latter's unavailability.

Gibbs testified that the Petitioner's score was one of the lowest she had ever experienced as an examiner. Dr. Gibbs stated that all of the testing data since 2002 consistently placed the Petitioner's reading skills in the 1<sup>st</sup> percentile of the population, or on the pre-primer to primer level despite the efforts of both the Respondent and the Petitioner's parents. Dr. Gibbs believed the Petitioner was reading at her maximum level of potential and there were no reading programs available that would move the Petitioner beyond the first to second grade level. Dr. Gibbs observed the CHOICES program offered by the Respondent and believed it to be appropriate for the Petitioner's needs. In her Comprehensive Literacy Evaluation Report, Dr. Gibbs concluded: "[Petitioner] should participate in a balanced program of life skills activities designed to prepare her for successful community integration and ultimately some type of employment. Any academic skills which are included in her IEP should be directly related to her work and life skills needs."

37. An IEP meeting was convened on June 11, 2009, to discuss the Petitioner's need for extended school year services during the summer of 2009. The Respondent refused the parents' demand that the Respondent pay for one-to-one ABA therapy for instruction in core academic skills in reading and math during the summer of 2009, to be provided by Kari Gray at the family home. As an alternative to the parents' requested services, the Respondent proposed summer services concentrating on IEP instructional goals for three hours per week and a social outing with a peer for one afternoon per week.

38. Ms. Gray has a master's degree in clinical psychology and has experience as an autism consultant. Dian Bridges has a master's degree in psychology with a concentration in ABA. Ms. Bridges is a BCBA, Ms. Gray is not. Neither individual is a certified teacher or a reading specialist. Ms. Gray began working with the Petitioner at her home in August 2008.

Initially she was working with the Petitioner two to four hours per week. In the fall of 2008, Ms. Bridges and Ms. Gray developed a home based educational plan for the Petitioner based upon ABA principles. Ms. Gray set up the educational component of the program. Beginning in May 2009 (and continuing to the present) Ms. Gray has been working with the Petitioner at her home ten hours per week. Ms. Bridges does not provide any direct instruction to the Petitioner. However she reviews videotapes of Ms. Gray's sessions with the Petitioner and meets with Ms. Gray weekly for one hour to provide oversight.

39. Ms. Gray expressed confidence in the appropriateness of the material she is using for her reading instruction program "The Behavior Analysis Phonics Primer" despite the fact that she was aware the material was published in 1973 and had been out of print for many years. Ms. Gray conceded that she had not consulted with any reading specialist to determine the appropriateness of this material in her work with the Petitioner.

40. A final IEP meeting was convened on August 31, 2009, for the purpose of discussing Dr. Gibbs' evaluation report and to review the Petitioner's progress over the summer in the program provided by her parents at home. Dr. Gibbs attended this meeting and reviewed her evaluation findings and recommendations. Ms. Gray and Ms. Bridges were also in attendance. Ms. Gray and Ms. Bridges presented a report summarizing the Petitioner's "huge gains" made during the summer of 2009 in a phonic based reading program utilizing ABA therapy. The Petitioner's family asked the Respondent for reimbursement for the cost of the services provided by Ms. Gray and Ms. Bridges from August 2008, and continuing for the

future.<sup>3</sup> At this meeting the Petitioner's parents provided the Respondent with written notice that the Petitioner was being withdrawn from the school system.<sup>4</sup>

41. In response to this reimbursement demand and the purported gains of the Petitioner claimed by Ms. Gray and Ms. Bridges, at the Respondent's request Dr. Gibbs re-assessed the Petitioner on October 13, 2009, to determine what gains she had made during her work with Ms. Gray over the summer. Upon re-assessing the Petitioner, Dr. Gibbs found no appreciable gains in her reading skills from the time of her initial assessment in June 2009. In contrast to Ms. Gray's assessment, Dr. Gibbs found signs of regression. Dr. Gibbs was very critical of Ms. Gray's teaching materials and methods to the extent that she testified:

If she (Gray) was a speech language pathologist doing this, I would file charges on ethical practices with the speech language pathology board in Tennessee. I am just sad that she's not under any ethical practices board that I know of that we can file charges because that (Gray's methodology) is wrong, that is harmful.

#### CONCLUSIONS OF LAW

1. The IDEA requires the Respondent Sumner County Board of Education to provide FAPE in the "least restrictive environment" to all students with disabilities who are in need of special education and related services. 20 U.S.C. §1400 et seq.; TN State Board of Education, Division of Special Education Rule Chapter 0520-1-9. This shall be done by developing an IEP that is "reasonably calculated to confer educational benefit" to the students. See Bd. of Educ. of the Hendrick Hudson School Dist. v. Rowley, 458 U.S. 176 (1982). As the Supreme Court concluded in Rowley, "If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more." 458 U.S. at 207. The law does not require the Respondent to maximize the Petitioner's educational benefits, or to

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<sup>3</sup> As of the date of the hearing the Petitioner's family had spent \$18,000 for the private services of Ms. Gray and Ms. Bridges.

<sup>4</sup> The Petitioner was not attending school at the time of the hearing in this matter.

guarantee that she reach a specific level of academic achievement. Rowley, at 197. The Sixth Circuit has held that this means “[t]he statute may not require public schools to maximize the potential of disabled students commensurate with the opportunities provided to other children.” Renner v. Board of Educ. v. Public Schools of City of Ann Arbor, 185 F.3d 635, 644 (6<sup>th</sup> Cir. 1999). *See also*, Doe v. Tullahoma City Schools, 9 F.3d 455 (6<sup>th</sup> Cir. 1993).

2. The IDEA, at 20 U.S.C. §1414(d)(1)(A) requires that an IEP include, among other things, (1) a statement of the child’s present levels of educational performance; (2) a statement of measurable annual goals; (3) a statement of the special education and related services and supplementary aids and services to be provided to the child that, to the extent practicable, are based on peer reviewed research; (4) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the nonacademic and extracurricular activities; (5) a statement of how the child’s progress toward the annual goals will be measured; and (6) a statement of how the child’s parents will be regularly informed of their child’s progress. These “are requirements by which the adequacy of an IEP is to be judged, although minor technical violations may be excused.” Cleveland Heights-University Heights City Sch. Dist. v. Boss, 144 F.3d 391, 398 (6<sup>th</sup> Cir. 1998).

3. In Rowley, the Supreme Court developed a two-prong test for determining the appropriateness of a proposed IEP. First, the IEP must be substantively appropriate by offering goals and objectives that are “reasonably calculated to provide educational benefit” to the child. Second, the procedural safeguards of the Act must be provided to the parents, including the right to participate in the development of the IEP and to receive notification and explanation of their rights. The Court has interpreted the IDEA’s “free appropriate public education” obligation to require local school systems to develop IEPs that are “reasonably calculated” to provide

educational benefit to a child. Rowley, at 203-204. While the educational benefits accruing to the child must be "meaningful," there is no requirement that the program provide the maximum benefit or the best available program. Rowley, at 200-201.

4. The Petitioner has the burden of proving by a preponderance of the evidence that her IEP was inadequate and that she has not received FAPE from the Respondent. The U.S. Supreme Court held in Schaffer v. Weast, 546 U.S. 49 (2005), that the burden of proof is on the party "seeking relief." In the instant case, the Petitioner has challenged the proposed IEP developed on January 6, 2009, and intended to be implemented in the CHOICES classroom at Beech High School. In the alternative, the Petitioner is demanding four years of compensatory education, reimbursement for expenses incurred by the family for the services of Ms. Gray and Ms. Bridges, a new Individualized Education Program (IEP) based upon one-to-one ABA instruction in core academics and other related services.

5. The essence of this case is the unrealistic, yet completely understandable, expectation the Petitioner's parents have for her academic potential. They now believe that by using one-to-one ABA methods the Petitioner's achievement in "core academics," especially reading, can be significantly enhanced. However, the proof is overwhelming that the Petitioner functions developmentally at a kindergarten to first grade level, with commensurate academic skills. The assessments and evaluations of the Petitioner have been remarkably consistent from the time she first entered public school in Illinois as an 8 year old in 1996 to the present. Her IQ is in the low 40's and she has a significant cognitive deficiency with commensurate adaptive behavior deficits. The Petitioner has serious weaknesses in social and vocational skills. The reality is that the Petitioner will likely never perform significantly beyond the first grade level academically.



6. When the Petitioner enrolled in the Sumner County schools in 2004 at the age of 16, the Respondent fulfilled its obligation to recognize her unique abilities and needs and to formulate an individualized educational plan accordingly. The Respondent determined the central focus of her educational development was to be the acquisition of academic and vocational skills that would lead towards independence and self-sufficiency. This included a plan for transition services, or the CHOICES program, which the Respondent first proposed in May 2007 for the 2007-08 school year.

7. The Respondent and the Petitioner's parents were initially in agreement on her instructional plan and her IEP after the Petitioner's arrival in Sumner County in December 2004. The Petitioner's parents agreed to every IEP until the proposed IEP of January 6, 2009. The Respondent acceded to the parents' wishes in 2005 and 2006 and did not implement a transition program for the Petitioner and instead focused more on "core academics", specifically the Reading Milestones program. The Petitioner's classroom teacher Ms. Holmes continued to "push" her through the Reading Milestones curriculum at the insistence of the Petitioner's mother despite a lack of any significant progress.

8. The IEP agreed to by the parties on May 9, 2007, placed the Petitioner in the CHOICES program for the 2007-08 school year beginning the following August. However, by October 2007, the Petitioner's parents became dissatisfied with CHOICES and requested that she be removed from the program and placed back in the CDC classroom where she could focus on reading and math skills. The parents' wishes for the CDC classroom as well as other specifics were agreed to by the Respondent and implemented in the October 18, 2007, IEP. The Petitioner remained in the CDC class through May 2009, despite the Respondent's belief that she would be better served in the CHOICES program. Indeed the three experts who evaluated the Petitioner in

2009, John Thomas (autism/transition services), Dr. Christine Reeve (BCBA) and Dr. Denise Gibbs (reading) were in agreement that the Petitioner's needs would be best served in the CHOICES program offered by the Respondent at Beech High School.

9. The Respondent's actions the entire time the Petitioner has been enrolled in the school system, especially during the school years of 2007-08 and 2008-09 when the Petitioner was in the CDC class rather than the more appropriate CHOICES program, clearly demonstrate the good faith lengths to which the Respondent went to accommodate the wishes of the Petitioner's parents. At this late date the Petitioner's parents cannot now argue that the individualized educational plans provided to the Petitioner from 2005 until the end of the 2009 school year were inadequate when for the most part the Respondent was providing the specific programs demanded by the parents.

10. The evidence demonstrates the Petitioner has made modest academic progress during her years in the Sumner County Schools despite her parents' refusal to allow her to participate in the CHOICES program. It is certainly conceivable that the Petitioner would have made more progress had she participated in the CHOICES program throughout the 2007-08 and 2008-09 school years as recommended by the Respondent. Since October 2007, the Petitioner's parents have refused to allow her to participate in the CHOICES program or any type of work-based programming that would have combined instruction in functional academics and vocational training.

11. As an alternative to the IEP proposed by the Respondent in January 2009, the Petitioner has been removed from the public schools and is seeking: (1) four additional compensatory years of schooling with an extended school year and extended day services; (2) a small group setting with a highly qualified teacher certified to teach a child with autism and

highly qualified paraprofessional; (3) a teacher trained in ABA and TEACCH; (4) a sensory diet; (5) services from a BCBA; (6) assistive technology/computer programs for reading, writing, and math designed for students with autism; (7) an additional two hours per day of academic instruction for three school days per week; and (8) the Beacon Literacy reading. The Petitioner is also seeking reimbursement for the cost of the private services of Ms. Gray and Ms. Bridges totaling approximately \$18,000. The Petitioner has failed to establish that she is entitled to the relief sought.

12. An individual is entitled to compensatory education services under the IDEA after they are no longer in the public school due to age or graduation if it can be established that they had not been provided FAPE by the school system and that additional years of education are necessary to bring the student to the level they otherwise would have attained had they been receiving FAPE. See Reid ex rel. Reid v. Dist. of Columbia, 401 F. 3d 516 (D.C. Cir. 2005). It has been clearly demonstrated in this case that the Respondent has provided FAPE to the Petitioner, despite impediments to the full implementation of the Respondent's proposals put forth over the years by the Petitioner's parents. The overwhelming weight of both expert and lay testimony is that the IEPs put in place by the Respondent (and agreed to by the Petitioner's family) were appropriate to meet the educational needs of the Petitioner. It was further established that the transition plan proposed by the Respondent, which included as a critical component the CHOICES program, was more appropriate for the Petitioner than the CDC class and focus on "core academics" demanded by the parents. The Petitioner has failed to establish by a preponderance of the evidence that she was denied FAPE by the Respondent and is entitled to compensatory education for any length of time, most certainly not four years.

13. Parents are entitled to reimbursement for the private education of a student if it is determined that the private setting provided an appropriate education while the public school's proposed education plan did not. *See Florence County School District Four v. Carter*, 510 U.S. 7 (1993); *School Comm. of the Town of Burlington v. Dept. of Education*, 871 U.S. 359 (1985). The Petitioner has failed to prove that she is entitled to reimbursement for the expenditures incurred for the private services of Ms. Gary and Ms. Bridges. As stated above, the Petitioner cannot demonstrate that the Respondent failed to provide FAPE. Even if she could so establish, the Petitioner has failed to prove that the services of Ms. Gray and Ms. Bridges were appropriate.

14. There are numerous deficiencies in the programming being provided at home for the Petitioner by Ms. Gray and Ms. Bridges. Neither Ms. Gray nor Ms. Bridges have any educational training or hold any licensure in the State of Tennessee. Neither of the women is a reading specialist. The materials being used by Ms. Gray have been out of print for many years and apparently are no longer used by reading specialists. Neither Ms. Gray nor Ms. Bridges consulted with a reading specialist in the formulation of their instructional program.

15. Dr. Gibbs, a reading specialist, was highly critical of the program utilized by Ms. Gray, so much so that she believed that Ms. Gray could be subject to sanction by a licensing board for ethical violations if Ms. Gray was licensed in Tennessee. Despite the claims of the Petitioner's "huge gains" over the summer months of 2009 while working with Ms. Gray, Dr. Gibbs' re-assessment found no gains by the Petitioner and possible regression.

16. The Petitioner has failed to establish by a preponderance of the evidence that she is entitled to reimbursement for the cost of the private services of Kari Gray and Dian Bridges.

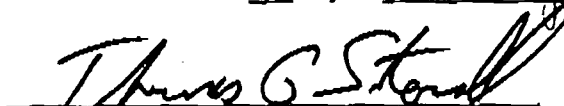
17. The Petitioner has also failed to establish any merit to the other claims for service requested as an alternative to the IEP proposed by the Respondent in January 2009.

### CONCLUSION

The Petitioner has failed to carry her burden of proof by a preponderance of the evidence that the Respondent has failed to provide her FAPE since the time she enrolled in the Sumner County schools in 2004, that the IEP proposed by the Respondent in January 2009 is inadequate and will not provide FAPE, and that she is entitled to compensatory educational services, reimbursement for the cost of private services as well as the other items requested by the Petitioner's parents in their alternative to the January 2009 IEP. The unfortunate reality is that the Petitioner functions developmentally at a kindergarten to first grade level, with commensurate academic skills. Her assessments and evaluations have been consistent throughout her school years. While perhaps understandable, the Petitioner's parents have an unrealistic expectation for her academic potential. The Petitioner's request for compensatory and alternative services, as well as reimbursement for private services, is **DENIED**. The January 6, 2009, IEP shall be implemented and the Respondent shall provide services to the Petitioner through the end of the 2010-11 school year.

The Respondent Sumner County Board of Education is the prevailing party in this action.

This Final Order entered and effective this 10<sup>th</sup> day of February, 2010.

  
Thomas G. Stovall  
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 10<sup>th</sup> day  
of February, 2010.

Thomas G. Stovall, abh  
Thomas G. Stovall, Director  
Administrative Procedures Division

Notice

Any party aggrieved by this decision may appeal to the Chancery Court for Davidson County, Tennessee or the Chancery Court in the county in which the petitioner resides or may seek review in the United States District Court for the district in which the school system is located. Such appeal or review must be sought within sixty (60) days of the date of the entry of a Final Order. In appropriate cases, the reviewing court may order that this Final Order be stayed pending further hearing in the cause.

If a determination of a hearing officer is not fully complied with or implemented, the aggrieved party may enforce it by a proceeding in the Chancery or Circuit Court, under provisions of Section 49-10-601 of the Tennessee Code Annotated.